

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Mailed: February 10, 2005
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Iterated Systems, Inc.

Serial No. 75517354

Allyn Taylor of Gray Cary Ware & Freidenrich LLP for
Iterated Systems, Inc.

David T. Taylor, Trademark Examining Attorney, Law Office
112 (Janice O'Lear, Managing Attorney).

Before Quinn, Hairston and Bucher, Administrative Trademark
Judges.

Opinion by Hairston, Administrative Trademark Judge:

Iterated Systems, Inc. has filed an application to
register the mark MEDIABIN for "computer software for
compressing, scaling, indexing, editing, archiving, and
storing digital media data."¹

The trademark examining attorney refused registration
under Section 2(e)(1) of the Trademark Act on the ground

¹ Application Serial No. 75517354, filed July 13, 1998, based on
an allegation of a bona fide intention to use the mark in
commerce.

that applicant's mark, if applied to applicant's goods, would be merely descriptive thereof.

When the refusal was made final, applicant appealed. Applicant and the examining attorney filed briefs. An oral hearing was not requested.

It is the trademark examining attorney's position that the mark MEDIABIN is merely descriptive of applicant's goods because it identifies a feature thereof, that is, "applicant's software (a form of media or medium) stores and manages media content." (Brief, p. 4). The examining attorney argues that "MEDIA" is descriptive of applicant's goods in two ways, that is, "applicant's computer software is a type of material that holds data and allows data to pass through (media) and, the software stores and manages digital media data." (Brief, p. 3). In addition, the examining attorney contends that "BIN" is descriptive of applicant's goods because "applicant's computer software serves in the capacity of an electronic storage 'BIN' in that it is used for storing electronic media data." (Brief, pp. 3-4). In support of the refusal, the examining attorney submitted the following definitions:

media: materials that hold data in any form or that allow data to pass through them, including paper, transparencies, multipart forms, hard, floppy and optical disks, magnetic tape, wire, cable and fiber.

(The Computer Language Company Dictionary).

bin: a box, frame, crib or enclosed place used for storage.

(Merriam-Webster Dictionary 1998).

In addition, the examining attorney submitted evidence from NEXIS articles showing uses of the term "media bin"; and from an online publication, which contains a review of applicant's computer software. The examining attorney, therefore, concluded that the mark MEDIABIN was merely descriptive of applicant's goods.

In response to the refusal, applicant argues that the mark MEDIABIN is not merely descriptive because it does not convey information about applicant's specific type of computer software. According to applicant, although the term "storing" is included in the identification of goods, its computer software is not a media storage product as the examining attorney contends. Rather, applicant maintains that its computer software "is used for analyzing and customizing features of digital media data and recording, cataloging, and tracking information about the data, for use with publishing activities." (Brief, p. 6). Applicant argues that nearly every computer software program,

including its own, includes some function that relates to storing data, but that this fact cannot support a finding that the descriptive name of such programs is "media bin" or that the programs feature a "media bin." With respect to the NEXIS evidence submitted by the examining attorney, applicant argues that the use of "media bin" therein refers to products that are different from applicant's computer software.

A term is deemed to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it forthwith conveys an immediate idea of an ingredient, quality, characteristic, feature, function, purpose or use of the goods or services. In re Gyulay, 820 F.2d 1216, 3 USPQ 1009 (Fed. Cir. 1987) and In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978). A term need not immediately convey an idea of each and every specific feature of the applicant's goods or services in order to be considered merely descriptive; it is enough that the term describes one significant attribute, function or property of the goods or services. In re Venture Lending Associates, 226 USPQ 285 (TTAB 1985). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or

services for which registration is sought, the context in which the mark is used, and the impact that it is likely to make on the average purchaser of such goods or services.

In re Recovery, 196 USPQ 830 (TTAB 1977).

The examining attorney's evidence demonstrates that the term MEDIABIN is descriptive of at least a feature of applicant's goods. Applicant's computer software works on digital media data. Furthermore, a bin is a place used for storage. A feature of applicant's computer software is that it allows users thereof to create a place for storing digital media data, i.e., a media bin. A review of applicant's computer software taken from the home page of an online publication (www.line56.com) states in part:

Headline:

MediaBin 3.0, Courtesy of Interwoven

3.0 Version supports service-oriented architectures for brand management, user promised faster, better linkages to other enterprise app.

Body:

Interwoven has announced the availability of MediaBin Asset Server 3.0

MediaBin provides digital asset management (DAM), which can be thought of as an advanced filing cabinet or a portal for images and other digital assets.

The fact that applicant's computer software is described in terms of an "advanced filing cabinet"

demonstrates that the storage of images and other digital assets is a key feature of the software.

Furthermore, the examining attorney established that the term "media bin" is used in connection with computer software:

A traditional two-window view of Source and Program morphs to reflect your current task with the left-hand source viewer changing into a trim window, effects or compositing window, an audio equalizer, or whatever task is at hand. The media bin still starts out in the lower left corner, with the timeline or sequence window to the lower right.
(Emedia Magazine; August 2002);

First, sign on and select an artist. Choose from such acts as A*Teens, Hanson, Pink, Papa Roach and Samantha Mumba. After you drag the artists hit song, clip into the sites media bin and wait for it to upload, you're prompted to select stills, video clips and sound effects. You can use images you've gathered on your own or the ones on the site.
(South Bend Tribune; September 18, 2001);

To the right of that is the Project View window, which displays a breakdown of the elements contained in your presentation. The interface is customizable: expand and collapse the view and change the size of the icons. Below that is the media bin, which stores folders of video clips and graphic images.
(Video Systems; March 2001);

Like Ulead's MediaStudio Pro 6.0, Premier imports all clips in the correct sequence to the timeline with a simple drag and drop. And Premier's Libraries, which are essentially external media bins, are accessible to multiple projects.
(PC Magazine; October 3, 2000);

Version 4.0 software, now available for POSTBOX, features greater customization of timelines, bins and preferences, one-step editing, direct digitize to timeline, Rock 'n' Trim scrubbing of video and audio with JKL keys, networkable media bins, and waveform and vector scope monitoring. (American Printer; January 1996); and

You import and arrange bit-map, vector, movie, and audio files in the media bin and then drag them into position in the preview area. (InfoWorld; June 2, 1997).

A review of the examining attorney's evidence clearly shows that the term "media bin" is merely descriptive of applicant's goods. While applicant argues that "storage" is not the main purpose of its software, it is clear that it is a significant feature of such software. Indeed, applicant's identification of goods sets forth this specific feature, i.e., "computer software for ... storing digital media data."

Finally, the fact that applicant joins the words "media" and "bin" without a space does not change the commercial impression and does not change the descriptiveness of the terms. See *In re Abcor*, 200 USPQ at 218. Therefore, we conclude that the combined term MEDIABIN is merely descriptive of applicant's computer software for compressing, scaling, indexing, editing, archiving, and storing digital media data. The term immediately describes a significant feature of the computer

Ser No. 75517354

software, that is, it allows users thereof to create a place for storing digital media.

Decision: The examining attorney's refusal to register under Section 2(e)(1) is affirmed.